



Alerts

Electronic Monitoring in Long-Term Care Facilities to be Allowed as of January 1, 2016

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Health Care Alert

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Illinois has now followed New Mexico, Oklahoma, Texas and Washington in passing the [Authorized Electronic Monitoring in Long-Term Care Facilities Act](#) (hereinafter the "Act"). In short, the Act allows residents or families of residents in long term care facilities to install cameras or other electronic monitoring devices. What does this new law mean for the owners and operators of long-term care facilities?

Who Is Affected: According to the definitions provided in the Act, the Act covers intermediate care facilities for the developmentally disabled licensed under the ID/DD Community Care Act that has 30 beds or more, a long-term care for under age 22 facility licensed under the ID/DD Community Care Act, or a facility licensed under the Nursing Home Care Act. Authorized Electronic Monitoring in Long-Term Care Facilities Act, No. 99-0430, § 5 (Aug. 21, 2015).

When Does The Act Take Effect: January 1, 2016. § 99.

What Does The Act Require: In short, the facility must now allow the resident or their families to electronically monitor their rooms. Section 10(a) states: "A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to this Act." § 10(a).

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The Act expressly does not allow for still photographs and non-consensual monitoring. § 10(b).

Who Can Request The Monitoring: The resident or the legal guardian of the resident. § 15(a). Additionally, the monitoring can be requested by the "resident's representative" as defined by the Nursing Home Care Act as a person other than the owner not related to the resident, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his representative, or the resident's guardian (210 ILCS 45/1-123).

Any resident with a roommate must also gain the permission of the roommate. § 15(c).

What Are The Requirements For The Monitoring Installed: The monitoring device must be placed in a conspicuous location. § 25(d).

Who Pays For The Monitoring: The resident. § 25(a). However, the law envisions some public funding for the monitoring. § 27.

If the monitoring device requires the internet, the resident must make arrangements for the internet access and pay any associated charges. § 25(b).

The Department intends on creating an "Assistance Program" which will be a scholarship program to provide financial grants to residents receiving medical assistance under Article V of the Illinois Public Aid Code. § 27(a). It is the intent of the law for the Department to develop an application for the assistance. § 27(c). The Act intends on the Department distributing \$50,000 on an annual basis. § 27(b).

Can The Facility Charge For The Monitoring or Allowing The Monitoring: No. § 25(e).

What Are The Duties of The Facility: Under the Act, the facility must make "a reasonable attempt" to accommodate the resident's request for monitoring and any installation needs. § 25(c). The Act does not define "reasonable attempt" but this would likely be efforts such as changing the rooms of those who have requested the electronic monitoring. This is an important point because a facility has the burden of proving that a requested accommodation is not reasonable. § 25(c).

The facility must also provide information to the Department as to the number of "authorized electronic monitoring notification and consent forms received annually." § 55.

Additionally, the facility must document the request by the resident or guardian. § 20(c). The facility must use an approved form (to be developed by the department) to document the request and logistics of the request. § 20(b). The form will then be contained in the resident's clinical file. § 20(c).

Notice to Others: Signs must be posted by the facility in the entrances to the buildings and the rooms being monitored advising of the electronic monitoring devices. § 30.

Penalties: The Act makes "knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room" a Class B misdemeanor. § 40(a), (c). A person or entity that violates this Section in the commission of or to conceal a misdemeanor offense is guilty of a Class A misdemeanor. § 40(c). A person or entity that violates this Section in the commission of or to conceal a felony offense is guilty of a Class 4 felony. § 40(c).

Additionally, the facility can be held liable for intentionally retaliating or discriminating against any resident for consenting to authorized electronic monitoring or to prevent the installation or use of an electronic monitoring device. § 70. A violation of this Section is a business offense punishable by a fine not to exceed \$10,000. § 70.

Who Owns The Information From The Monitoring Device: The resident. The facility has no right to the footage. § 45.

How Can The Information From The Monitoring Device be Used: The Act expressly provides that the information "may only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident or residents." § 45(b). This would expressly include litigation. § 45(c).

The Act provides that the information obtained may be "admitted into evidence in a civil, criminal, or administrative proceeding." § 50. However, the information cannot have been "edited or artificially enhanced and the video recording includes the date and time the events occurred." § 50.



What to do Going Forward

Regardless of one's opinion of the Act, it is clear that the Act will change the way that long term care facilities are managed. Policies and procedures will need to be updated to comply with the Act. Specifically:

- Revisions to resident rules and regulations to allow for the electronic monitoring consistent with the logistical issues presented by the particular facility.
- Education of the other patients and the patient families as to this new law.
- Education of the clinical and non-clinical staff regarding the new electronic monitoring.
- Logistical training for those working around the electronic monitoring devices to prevent damage and injury.
- Development of policies and procedure for addressing complaints centering on the electronic monitoring devices.

For more information and guidance, please contact [David Alfini](#) or [Adam Guetzow](#).

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.